

XOCKKGUO1

SEALED - EX PARTE WITH DEFENSE

1 (Government counsel not present)

2 THE COURT: Mr. Kamaraju, are you asking that I seal
3 the courtroom?

4 MR. KAMARAJU: I am, your Honor, to the extent you are
5 going to discuss the potentially privileged matter involving
6 the client.

7 THE COURT: All righty.

8 So, those of you who are in the gallery, you must step
9 out.

10 (Courtroom sealed; defendant and defense counsel
11 present)

12 THE COURT: On December 10th, I received a letter from
13 Mr. Guo's retained attorneys. Counsel seeks leave to withdraw
14 as counsel a mere six days before Mr. Guo's sentencing
15 submission was due, and after representing Mr. Guo during a
16 nearly two-month long jury trial, on a more than \$1 billion
17 complex financial fraud scheme. The letter states that Mr. Guo
18 has informed his counsel "that he no longer wishes to
19 communicate with, or be represented by, his trial team, and
20 that he does not have the financial resources to retain new
21 counsel."

22 The letter requests that the Court appoint the Federal
23 Defenders to represent Mr. Guo.

24 The Second Circuit has explained that the Sixth
25 Amendment provides a criminal defendant the right to effective

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1 assistance of counsel, but does not guarantee a meaningful
2 relationship between the defendant and his counsel. *United*
3 *States v. John Doe # 1*, 272 F.3d 116, 122 (2d Cir. 2001).
4 Whether to grant a motion for substitution of counsel is a
5 determination left to the discretion of the district court,
6 which has a duty to investigate when a defendant complains
7 about his counsel. *United States v. Stringer*, 10 CR 632,
8 2012 WL 11268, at *8 (S.D.N.Y. Jan. 3, 2012). When deciding a
9 request for substitution of counsel, I'm required to consider
10 the timeliness of the motion, inquire into the reasons for the
11 motion, determine whether the conflict between the defendant
12 and his attorney is so great, that it has resulted in a total
13 lack of communication, thereby preventing an adequate defense,
14 and consider whether the defendant substantially and
15 unjustifiably contributed to the breakdown in communication.
16 *John Doe # 1*, 272 F.3d, at 122 to 23.

17 Mr. Guo, I will start by asking you a few questions.

18 Please swear the defendant.

19 (Defendant sworn)

20 THE COURT: You may be seated.

21 Mr. Guo, you're now under oath.

22 Is it your wish that you no longer be represented by
23 your attorneys?

24 THE DEFENDANT: Yes.

25 THE COURT: You don't have to stand when you address

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1 me; you may remain seated.

2 And why is that?

3 THE DEFENDANT: So, I truly appreciate the opportunity
4 your Honor give me to speak.

5 So, from the start of my case, my trial team that
6 represent me has made a series of big mistakes that cannot be
7 accepted.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 I want to raise some examples.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

As for RICO, the most important witness in this part is Mr. Luc, Trustee Luc, who had never testified, [REDACTED]

[REDACTED]

As for the third part is the G Clubs, [REDACTED]

[REDACTED]

THE COURT: So, Mr. Guo, what I understand from what you've said is that you believe that your attorneys should have presented different legal arguments and different facts, correct?

THE DEFENDANT: Yes. Not even the most basic ones.

[REDACTED]

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THE COURT: So, I understand, Mr. Guo, that you disagree with the way that your attorneys handled your representation.

THE DEFENDANT: There is no trust at all based on variable results or a result of the ineffective representation by my counsel.

THE COURT: So, do you understand, Mr. Guo, that the United States Constitution provides a criminal defendant the right to effective assistance of counsel, but it does not guarantee a meaningful relationship between a defendant and his attorney?

THE DEFENDANT: Yes.

THE COURT: You understand that the attorneys representing you are competent and experienced attorneys, who diligently represented you throughout the course of an approximately two-month trial?

THE DEFENDANT: No, not even the basics. I am very disappointed.

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1 THE COURT: Do you understand that your counsel are
2 familiar with this case, and likely are better suited than any
3 other attorneys to continue representing you, especially as it
4 relates to your upcoming sentencing?

5 THE DEFENDANT: Not at all.

6 THE COURT: And do you understand that any advice that
7 your attorneys give you is based on their review of the law,
8 the facts of the case, and their familiarity with the case?

9 THE DEFENDANT: I don't think they have reviewed my
10 case materials.

11 THE COURT: Do you understand that, in circumstances
12 in which a defendant has substantially and unjustifiably
13 contributed to the breakdown in communication between himself
14 and his attorneys, that he is not entitled to have a different
15 lawyer?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Kamaraju, what is the nature of the
18 disagreement between you and Mr. Guo?

19 MR. KAMARAJU: [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 decisions.

7 THE COURT: What efforts have you made to discuss the
8 case with him?

9 MR. KAMARAJU: You mean posttrial, your Honor, or just
10 generally?

11 THE COURT: Yes.

12 MR. KAMARAJU: I wanted to make sure.

13 THE COURT: Yes.

14 MR. KAMARAJU: [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 regularly at the jail, but that is, in part, because I've been
2 focused on the legal issues, and, also, it seems clear that he
3 does not want to communicate with me.

4 THE COURT: So, do you think that he has substantially
5 and unjustifiably contributed to the breakdown in
6 communication?

7 MR. KAMARAJU: [REDACTED]
8 [REDACTED]
9 [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 THE COURT: So, these difficulties, do you believe
16 that they prevent you from providing adequate defense?

17 MR. KAMARAJU: I believe so, your Honor. [REDACTED]
18 [REDACTED]

19 THE COURT: So, Mr. Guo, you want to hire a new
20 attorney or attorneys?

21 THE DEFENDANT: Yes, your Honor, but I don't have the
22 financial resources to afford one, so I hope that your Honor
23 can appoint me a government-appointed counsel.

24 THE COURT: So, I watched so many videos in which you
25 said how rich you are, but now you say you're poor; is that it?

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1 THE DEFENDANT: Yes, your Honor. As you know, I have
2 filed personal bankruptcy.

3 THE COURT: The Criminal Justice Act provides for the
4 appointment of counsel if, at any stage of the proceedings, I
5 find that the defendant is financially unable to pay counsel
6 whom he had retained. Title 18, United States Code,
7 Section 3006A(c). I may appoint counsel in this manner only if
8 I'm satisfied, after appropriate inquiry, that the defendant is
9 financially unable to obtain new attorneys. *Id.* at
10 Section 3006A(b). The CJA guidelines indicate that this
11 standard applies to a defendant whose net financial resources
12 and income are insufficient to enable him to obtain qualified
13 counsel. *United States v. Parker*, 439 F.3d 81, 97 (2d Cir.
14 2006).

15 Before appointing counsel, I must first conduct an
16 appropriate inquiry into the defendant's financial eligibility.
17 *United States v. Hadden*, 20 CR 648, 220 WL 7640673, at *3
18 (S.D.N.Y. Dec. 23rd, 2020). The defendant seeking appointment
19 of counsel must prove by a preponderance of the evidence that
20 he is financially unable to afford counsel.

21 I have considerable discretion in inquiring into the
22 defendant's finances in determining eligibility for appointed
23 counsel, and I may refuse to appoint counsel if I find that the
24 defendant's portrayal of financial inability lacks credibility.
25 *United States v. Knott*, 142 F.Supp.2d 468, 469, Note 1

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1 (S.D.N.Y. 2001).

2 I may decide the issue of financial ability based on
3 information provided by the defendant, by an affidavit.

4 And the affidavit that we use is CJA Form 23, and it
5 is the standard form in this district used by defendants to
6 provide comprehensive financial data for the purpose of
7 appointment of counsel. Whenever possible, defendants shall
8 complete and use CJA Form 23.

9 But I haven't received CJA Form 23, or any other
10 affidavit, setting forth the basis for your financial
11 inability, and so you're going to have to make the submission.

12 MS. SHROFF: Your Honor, I have a CJA financial form.
13 Mr. Guo can fill it out, or I can assist him in filling it out.

14 THE COURT: All righty.

15 So, is that something that you're going to do now, or
16 did you want to take more time to do that?

17 MS. SHROFF: Your Honor, that's up to Mr. Guo. A few
18 weeks ago, at the MDC, he had indicated that he had filled out
19 a financial affidavit a few days ago, but I can have him fill
20 out another one.

21 THE COURT: You're saying that he would do that now?

22 MS. SHROFF: He could, your Honor. I could take
23 two minutes and have him execute the document.

24 THE COURT: All righty.

25 So --

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1 MS. SHROFF: I could also submit it down the road if
2 Mr. Guo wishes more time or if that's better for the Court,
3 whichever way the Court wishes.

4 THE COURT: I'm certainly looking for a very
5 persuasive affidavit, and so if Mr. Guo needs time to do that,
6 then he should take that time.

7 MS. SHROFF: Your Honor, I can only represent to the
8 Court that Mr. Guo has informed us that he has no assets. I
9 don't want to take a while and then have him submit to the
10 Court an affidavit that would list him as having no property
11 and no cash or bank accounts.

12 THE COURT: You realize that the Court's inquiry goes
13 beyond that, and the Court may consider other evidence?

14 MS. SHROFF: Your Honor, I have never done this
15 before, but I'm happy -- I actually have never done that
16 before.

17 THE COURT: So, the question is whether you're going
18 to submit that now or whether you're going to take some time to
19 make that submission.

20 MS. SHROFF: Your Honor, may I confer with my
21 colleagues?

22 THE COURT: Go ahead.

23 MS. SHROFF: Thank you.

24 (Counsel conferred)

25 MS. SHROFF: Your Honor, I apologize, I don't think

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1 Mr. Guo would be able to list the total debt that he has. I
2 think he would need input from others to let the Court know how
3 many civil judgments there are against him or how much debt he
4 owes, including, I think, the dollar amounts from the
5 bankruptcy proceedings. So, out of caution, I think all three
6 lawyers feel that he may wish to take some time to tell the
7 Court what the debt is that he has.

8 THE COURT: So, will you continue to represent him in
9 order to produce that information?

10 (Counsel conferred with defendant)

11 THE DEFENDANT: Yes, yes, your Honor.

12 MS. SHROFF: Your Honor, we shall do so, and make sure
13 he also communicates with his civil counsel, who may be able to
14 better inform him of the dollar amounts.

15 THE COURT: All right.

16 So, when will you be submitting the affidavit?

17 MS. SHROFF: Your Honor, I don't really celebrate --
18 these holidays are not mine. I'm happy to submit it, like,
19 within a week or, if you want, shorter, whatever the Court
20 wants.

21 THE COURT: That's fine. Within a week is fine.

22 MS. SHROFF: Thank you.

23 THE COURT: So, Mr. Guo, what I want you to understand
24 is that you will be at a significant disadvantage by hiring an
25 attorney or being appointed an attorney, if I should decide

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1 that you are financially unable, who is not familiar with what
2 was a complicated case. You are better served by attorneys who
3 know the case because whatever submission I get is going to
4 have a significant influence on my decision about sentencing.
5 So, I would encourage you to reconsider this decision. You can
6 always change your mind and decide to remain with your
7 attorneys, but, of course, you have the right to fire them.
8 So, I will be looking forward to seeing the affidavit or some
9 other communication indicating that you've changed your mind.

10 THE DEFENDANT: [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 THE COURT: Well, I can tell you that, based upon my
15 experience with your attorneys, based upon their reputation,
16 not just in this courthouse, but nationally, you will not find
17 attorneys that are more capable than the ones that you already
18 hired. You may find somebody who is equivalent. I don't know
19 if that's going to be the case.

20 So, we'll have the prosecution brought back in,
21 please.

22 MS. SHROFF: Your Honor, may I submit the affidavit by
23 the 30th?

24 THE COURT: Yes, that's fine.

25 MS. SHROFF: Okay. Thank you very much.

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1 And, your Honor, I apologize, but may I ask that the
2 proceedings up until now be sealed and not made available to
3 anyone but defense counsel?

4 THE COURT: Yes.

5 MS. SHROFF: Thank you.

6 THE COURT: They are sealed.

7 MARSHAL: Your Honor, is the audience also supposed to
8 come in?

9 THE COURT: They may return.

10 (Continued on next page)

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